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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/553,805

11/27/2006

Paul Morrison

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EXAMINER

BATES, DAVID W

ART UNIT

PAPER NUMBER

3775

MAIL DATE

DELIVERY MODE

09/16/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,805	<b>Applicant(s)</b> MORRISON ET AL.	
	<b>Examiner</b> DAVID W. BATES	<b>Art Unit</b> 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 48-53,55,58,59 and 61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 48-53,55,58,59 and 61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 5, 2009 has been entered.

***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 48, 49, 51, 55 and 58 are rejected under 35 U.S.C. 102(b) as being anticipated by Leonard (WO 02/19919 A2).

4. Regarding claim 48, the claimed limitations have been taught by Leonard as demonstrated below:

**A retractor useful in surgery, said retractor comprising**  
**a main structural member** (retractor 10, see arrangement of  
fig. 1) **defining**  
**a handle region** (handle member 20),  
**a distal region** (first elongate section 30), **and**

Art Unit: 3775

**an intermediate region** (portion 32), **said intermediate region curving on planes normal to a main transverse dimension** (main dimension is longitudinal axis of elongate section 30) **thereby to define a low profile form having a concave lower side** (side having outer surface 36) **and a convex upper side** (side having inner surface 38),

**a light duct** (elongate section 40) **having an inlet end** (end of the elongate member at 31) **and an emission end** (proximal end portion 44) **ducting light received at the inlet end to the emission end,**

**said light duct** (elongate section 40), **at least in a part away from the inlet end** (end at 31), **substantially conforming to the curving intermediate region of the main structural member** (shaped region 49, more clearly seen in fig. 3) **so as to maintain a low profile thereover whilst having the emission end** (proximal end portion 44) **emitting light the light duct has received and ducted towards a zone in which said distal region of the main structural member is being operated,**

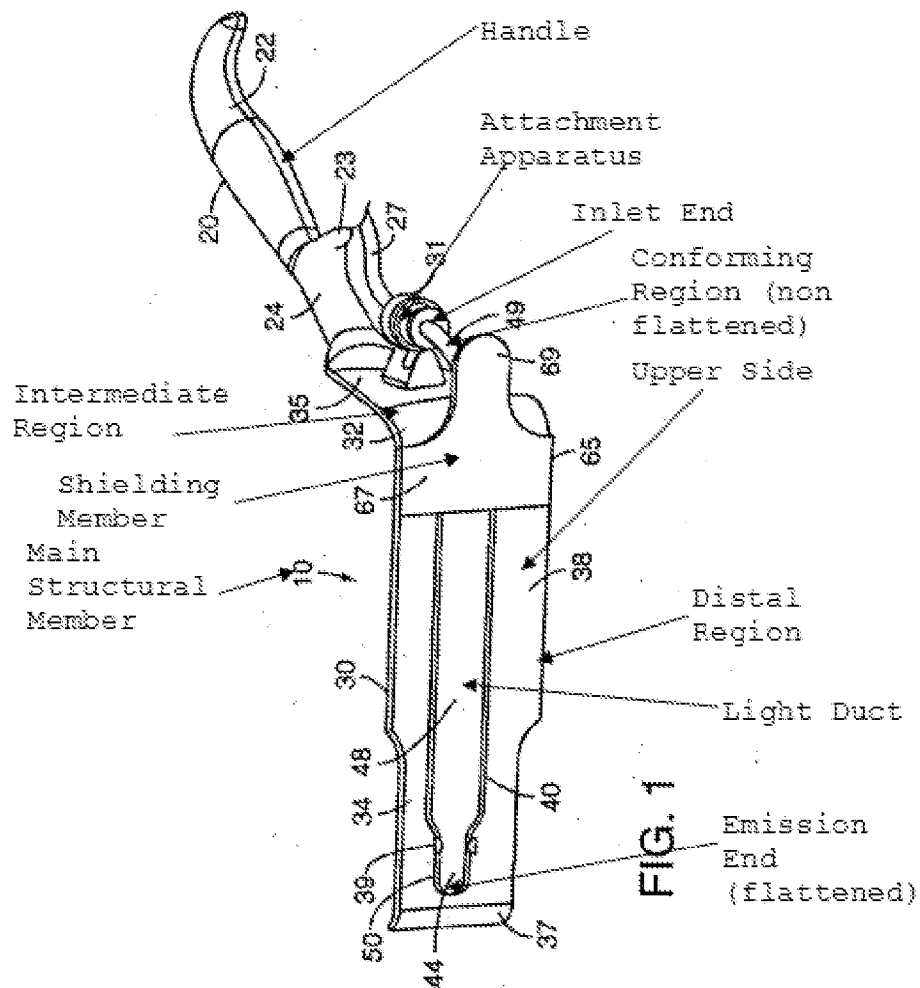
**an attachment apparatus** (connector 31) **attaching to the light duct at or adjacent the inlet end** (end of light duct 40 near 31) **of the light duct and engaging with, or for engagement with, the main structural member** (retractor 10), **and**

Art Unit: 3775

**a shielding member** (shield member 65) **protective of and conforming to all of the light duct over the curving intermediate region of the main structural member** (see fig. 7, the shield 65 is shown to curve upward to conform to the shaped portion 49 of the light duct 40) **and protective of at least most of the light duct extending from-beyond the curving intermediate region towards the distal region of the main structural member, said shield member at least attaching to the main structural member** (attachment to retractor 10 as seen in fig. 1), **the emission end of the light duct** (elongate section 40) **being substantially of a flattened section** (seen at 44) **for conforming to the low profile form of the intermediate region, the light duct splaying to said flattened section from a non flattened form at the inlet end** (see pp. 10, line 30 - pp. 11, line 2).

Examiner notes that the shield can be considered substantially conforming and protective of the curving intermediate region. The shield can be considered protective of *at least most of (a relative term)* the light duct extending beyond the curving intermediate region towards the distal region. Further, "protective" is a functional requirement and the shield is capable of protecting most of the light duct extending over the distal region.

Art Unit: 3775



5. Regarding claim 49, the above claimed limitations of claim 48 have been taught by Leonard. Further, the light duct (elongate section 40) is taught to be made of a transparent plastic (pp. 11, line 15). Further, the attachment apparatus (connector 31) is shown to be integrally molded with the light duct.

Art Unit: 3775

6. Regarding claim 51, Leonard has taught the above claimed limitations of claim 48, and further has taught the connector 31 being adapted to receive an optical cable 27 (pp. 9, lines 6-10).

7. Regarding claim 55, the above claimed limitations of claim 48 have been taught by Leonard. Further, Leonard has demonstrated the flattened section (44) of the light tube being thinner than the inlet end (near 49 and 31) (see fig. 8B).

8. Regarding claim 58, the above claimed limitations of claim 48 have been taught by Leonard. Further, Leonard has demonstrated the shielding member (65) conforming *closely* (relative term) to the flattened section of the light duct (see arrangement of fig. 3, lower portion 67 of the shield member 65 is seen to closely conform to the flattened section 44 of the light duct 40).

***Claim Rejections - 35 USC § 103***

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 50, 52 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leonard.

11. Regarding claim 50, the above claimed limitations of claim 48 have been taught by Leonard. Further, it would have been obvious to one having ordinary skill in the art at the time the

Art Unit: 3775

invention was made to substitute the single molded attachment apparatus and light duct with a light duct and apparatus which are made of two components since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

12. Regarding claims 52 and 53, Leonard discloses the claimed invention, but does not specifically the claimed ranges. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the invention of Leonard within the claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

13. Claims 59 and 61 are rejected under 35 U.S.C. 103(a) as being anticipated by Leonard in view of Wilder et al. (US 4,562,832).

14. Regarding claim 59, Leonard has taught the above claimed limitations of claim 48, but has not specifically taught a light and battery carried by the main structure. However, Wilder et al. suggest a structural member 11 having handle 13, curved region 14, and distal region 12; light ducting means 16 with inlet 16A and emission zone 16B; and shield 17, that includes a light source 23, and a provision for mounting battery (see col.



Art Unit: 3775

6, lines 52-61) which can be on the main structure in order to eliminate the need to couple the assembly to a remote light source. It would have been obvious to one with ordinary skill in the art at the time of the invention to incorporate the light source and battery of Wilder et al. with the device of Leonard to predictably eliminate the need to use the assembly with a remote light source.

15. Regarding claim 61, the combination of Leonard in view of Wilder et al. has suggested the above claimed limitations of claim 59. However, this combination has but not specifically taught the device having a switch. It would have been obvious to one with ordinary skill in the art at the time of the invention to use a switch to turn on and off a light source. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention to incorporate a switch with the combination of Leonard in view of Wilder et al. to simplify the application of power to the light source of Wilder et al.

#### ***Response to Arguments***

16. Applicant's arguments with respect to claims 48-53, 55, 58, 59 and 61 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID W. BATES whose telephone number is (571)270-7034. The examiner can normally be reached on Monday-Friday 9:00AM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/553,805

Page 10

Art Unit: 3775

/D. W. B./

Examiner, Art Unit 3775

/Thomas C. Barrett/

Supervisory Patent

Examiner, Art Unit 3775